

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

DEC -4 2008

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JESSICA R.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY, SCOTT R.,
SAMANTHA D., and KC D.,

Appellees.

2 CA-JV 2008-0065
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17773100

Honorable Suzanna S. Cuneo, Judge Pro Tempore

AFFIRMED

Peter G. Schmerl

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

E S P I N O S A, Judge.

¶1 Jessica R., mother of Scott R., Samantha D., and KC D., born in 1999, 2003, and 2005, respectively, appeals from the juvenile court's order terminating her parental rights

to her children based on the length of time the children spent in a court-ordered, out-of-home placement.¹ See A.R.S. § 8-533(B)(8)(b).² Jessica argues there was insufficient evidence to support the findings that she was unable to remedy the circumstances that caused the children to remain in an out-of-home placement or that there is a substantial likelihood that she will not be capable of exercising proper and effective parental care and control in the near future. She also challenges the sufficiency of the evidence to support the finding that termination of her parental rights is in the children's best interests. For the reasons set forth below, we affirm.

¶2 A juvenile court may terminate a parent's rights only if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). On review, we "accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

¶3 We view the evidence in the light most favorable to upholding the juvenile court's ruling. See *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In March 2006, then six-year-old Scott called 911 to report that his parents were

¹Samantha and KC's father, whose parental rights were also terminated, is not a party to this appeal.

²Now renumbered as A.R.S. § 8-533(B)(8)(c). 2008 Ariz. Sess. Laws, ch. 198, § 2.

fighting. A Child Protective Services (CPS) investigator accompanied a sheriff to the home and found drug paraphernalia in the home and described the following conditions:

The home was filthy. There [were] dirty dishes, and pots and pans in the sink approximately two feet high. There was broken glass on the floor where the children could have stepped on it or crawled through it cutting themselves. There was rotting food in the sink and on the counter. The refrigerator was moldy and had one gallon of milk in it. No other food was found in the home. All of the rooms were cluttered with clothing, trash, and animal feces that had been tracked all over the house. In one of the bedrooms, it appeared that one of the children had been playing with feces because it had been thrown on the ceiling. The entire house smelled of animal feces and vomit. This odor was evident as the home was approached from the outside. The home was full of flies.

The children had not been bathed in many days. All of the children smelled of feces and vomit as did the home. The children's clothing was filthy and had not been laundered for an extended period of time. The children's hair was matted, filthy, full of debris and had a very strong foul odor.

The mother and the father stated that they had a dog breeding business with pit bulls and pit bull puppies on their property. There were approximately 12 pit-bull dogs and approximately 10 puppies. The animals were being neglected, having no food or water and they were contained in filthy kennels. There were several dead puppies in the front yard [in] plastic grocery bags.

CPS investigator Edward Howard reported that Scott had described having watched his mother "sawing heads off of some puppies" and he knew the puppies had been alive because he had heard them "whimper." Officers arrested Jessica for animal cruelty and the father for outstanding warrants related to drug charges and removed the children from the parents' custody. The Arizona Department of Economic Security (ADES) filed a dependency petition alleging as to Jessica that the home was filthy, she had been cruel to animals in Scott's

presence, and she had been smoking marijuana and cooking methamphetamine in the home. In May 2006, the parents failed to appear at a settlement conference of which they had been provided notice, and the juvenile court adjudicated the children dependent as to both parents.

¶4 ADES provided various services to the parents in furtherance of the initial case plan goal of reunification. Jessica does not appear to dispute the adequacy of these services on appeal. Jessica was required to participate in the following services: random drug testing; a domestic violence program; family drug court; a substance abuse assessment program; a psychological evaluation; parenting and anger management classes; and individual counseling. Jessica was also required to resolve outstanding legal matters and maintain stable housing and a legal source of income to support the family. At a permanency planning hearing in September 2007, the juvenile court changed the case plan from reunification to severance and adoption. ADES filed a motion to terminate both parents' rights in October 2007, alleging as to Jessica length of time in care pursuant to § 8-533(B)(8)(a) and (b). On the final day of the contested severance hearing that spanned seven days between February and June 2008, the court terminated both parents' rights based on the children's having been out of the home for fifteen months or longer pursuant to § 8-533(B)(8)(b).

¶5 In order to terminate Jessica's parental rights pursuant to § 8-533(B)(8)(b), the juvenile court was required to find, inter alia, that Jessica had been unable to remedy the circumstances that caused the children to remain in an out-of-home placement pursuant to court order for a cumulative period of fifteen months or longer and that there is a "substantial likelihood" she would "not be capable of" adequately parenting the children "in the near future." The court made these findings, but Jessica contends ADES did not provide

sufficient evidence to support them, arguing that “[n]othing in the record demonstrates that the parents were still unable to adequately parent the children.”

¶6 Jessica denied using illegal drugs while the dependency was pending. But between March 2006 and June 2007, she either tested positive for drugs or failed to call in daily or provide urine samples as her case plan required. During one appointment in May 2006, at which she had tested positive for marijuana, Jessica maintained she had not used the drug since August 2005 and that she had tested positive only because “she was in the same room as somebody who was smoking.”

¶7 Psychologist Lorraine Rollins evaluated Jessica in 2006 and 2007. Rollins testified that both parents would have to completely comply with the drug-testing protocol before the children could be returned to them. When asked how long Jessica would have to participate in individual counseling to overcome the “antisocial qualities” with which she had been diagnosed, Rollins responded that the most important factor would be her attitude and whether she had become “invested” in change. In her written evaluations, Rollins reported that Jessica had characterized some of the case plan tasks as “stupid” and that, because Jessica had minimized the effect her substance abuse had had on her family, “therapeutic intervention likely will not yield significant beneficial change in her and she could present ongoing risk for neglect and/or some form of abuse.” Rollins also opined that Jessica’s condition would continue for a prolonged, indeterminate period of time, and that, “in spite of having a case plan and access to resources to overcome the problems which initiated CPS intervention, [Jessica] ha[d] not made serious investment in therapeutic change.” She

concluded that the “prognosis appears poor that she would demonstrate adequate parenting in the foreseeable future.”

¶8 Notably, Jessica did not meaningfully participate in the services offered by ADES until more than one year after the children had been removed from the parents’ custody. Services with Arizona Families First were formally terminated in May 2006 because she failed to participate in the program. CPS case manager Suzette Millet reported that “over one year after the children were removed and services were put in place,” the parents had continued to offer excuses for their failure to comply with the case plan and that “[d]espite the completion of services and the negative drops provided since June 2007, the parents continue[d] to put their own spin on why the children came into care, the reasons for the filthy conditions, [and] the reasons for their children’s behaviors and health.” Millet testified at the severance hearing that the parents had visited the children regularly only during the year before the hearing. Millet also testified that the parents had not successfully completed anger management classes, attained stable housing, maintained consistent employment, or complied with the random drug-screening protocol, as the case plan required. Millet added that Jessica frequently had denied or minimized her issues and was “not in the . . . right state of mind to deal with [her] particular issues.” Millet concluded that termination of Jessica’s parental rights and adoption of the children was the most appropriate direction for the family.

¶9 Psychologist Philip Balch evaluated Jessica in August 2007. He concluded “she will continue to have difficulties in adequately parenting and could continue to represent a potential danger to animals” Balch also reported that Jessica “saw her[self] as always

both a good mom and good dog breeder.” Balch concluded that Jessica had failed to “acknowledge that her children were endangered in any significant way” and noted that she “appear[ed] to be denying virtually every aspect of the concerns leading her to the attention of the Court and to CPS.” The court commented as follows at the end of the severance hearing:

If you read these [CPS] reports all the way to the first permanency report, that’s what they say, denial, denial, denial, denial. CPS needs to meet my terms, I don’t want to meet their terms, over and over and over again. That first year was lost. I agree, light bulbs went on in about a year. That didn’t mean the story was over, that meant the beginning.

¶10 Jessica also contends ADES did not provide sufficient evidence to support the juvenile court’s finding that severance of her rights was in the children’s best interests. ADES was required to establish that the children would benefit if Jessica’s rights were terminated or that continuing the parent-child relationship would be detrimental to them. *See Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). In making its assessment, the court could consider whether a current adoptive plan existed, whether the children are adoptable, or whether their existing placements are meeting their needs. *Id.*; *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 5, 982 P.2d 1290, 1291 (App. 1998). Millet testified that all three children had been placed in prospective adoptive placements and that they were happy and well-adjusted. She testified further that the two families with whom the children had been placed were willing to encourage sibling visitation. Millet concluded that delaying permanent placement of the children was not in their best interests. Phillip Fowler, the court appointed special advocate who had visited the

children almost monthly during the time the dependency was pending, noted the vast improvements all three children had shown and that all three were attached to their prospective adoptive families. He opined that termination was in the children's best interests.

¶11 Jessica points to evidence in the record that she maintains is in her favor. For example, she notes the testimony of Gabriella Olea, a facilitator at Casa de Los Niños, that she had been working with the parents since October 2007, their attendance rate was “outrageously great,” and the quality of their interaction with the children was among the best she had observed. Jessica also points to the testimony of visit supervisor Virginia Valencia that the parents had been appropriate and attentive during their visits with the children. But it was for the juvenile court to consider and weigh the evidence presented and resolve any conflicts in the evidence. *See In re Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987) (as fact-finder in termination proceeding, juvenile court is in best position to weigh evidence and judge credibility of witnesses). We do not reweigh the evidence on appeal. *Id.*

¶12 The record establishes the juvenile court terminated the parents' rights at the conclusion of the termination hearing after carefully considering the evidence presented. The court repeatedly emphasized that, although the parents had made progress in the two years since the dependency had begun, their failure to engage in the reunification process earlier had strongly influenced the court's ruling. *See In re Maricopa County Juv. Action No. JS-501568*, 177 Ariz. 571, 577, 869 P.2d 1224, 1230 (App. 1994) (“Leaving the window of opportunity for remediation open indefinitely is not necessary, nor do we think that it is in

the child’s or the parent’s best interests.”). The court characterized denying severance as a “crapshoot” and noted that it had no idea, after two years, if the parents could cope with the stress of raising three children, “despite monumental numbers of services provided” to them, and concluded that the risk to the children in denying severance was too great. And in finding that termination of Jessica’s parental rights was in the children’s best interests, the court noted: “These children are in stable homes. They are in adoptive homes. I believe based on the testimony, everything I heard, there’s a commitment to the sibling contact.” The record establishes the court soundly exercised its discretion.

¶13 Abundant evidence supports the juvenile court’s order terminating Jessica’s parental rights to Scott, Samantha, and KC. Therefore, we affirm that order.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge